

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 2015-077-00899R

Parcel No. 181/00553-070-984

Scott Brustkern,
Appellant,

v.

Polk County Board of Review,
Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on August 12, 2016. Scott Brustkern was self-represented. Assistant Polk County Attorney Mark Taylor represented the Polk County Board of Review.

Brustkern is the owner of a residential, two-story dwelling located at 1605 NW Wagner Boulevard, Ankeny. Built in 1997, it has 2193 square feet of above-grade finish and 800 square-feet of living-quarters quality basement finish. It also has a two-car attached garage, a deck, and an open porch. The site is 0.297 acres. (Ex. A).

The property's January 1, 2015, assessment was \$260,200, allocated as \$40,900 in land value and \$219,300 in improvement value. On his protest to the Board of Review, Brustkern claimed the assessment was not equitable as compared with assessments of other like property under Iowa Code section 441.37(1)(a)(1)(a). The Board of Review changed the grade downward from 3+05 to 3+00 and reduced the assessment to \$250,400, allocated as \$40,900 in land value and \$209,500 in improvement value. Brustkern then appealed to PAAB.

General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2015). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case.

§ 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount.

§§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it.

§ 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct.

§ 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* Conversely, sale prices of abnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the factors that distort market value, including but not limited to foreclosure or other forced sales. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2).

Inequity Claim

i. Applicable Law

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993).

A taxpayer may also show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 257 Iowa 575, 133 N.W.2d 709 (Iowa 1965). The six criteria include evidence showing

“(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination.” *Id.* at 711.

The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id.* The *Maxwell* test may have limited applicability now that current Iowa law requires assessments to be at one hundred percent of market value. § 441.21(1). Nevertheless, in some rare instances, the test may be satisfied.

ii. Findings of Fact

Brustkern purchased the subject property in October 2013 for \$246,000.

Brustkern asserts his property is assessed higher on a per-square-foot basis than other comparable properties in the same location. He believes the correct assessment is \$227,000. Moreover, he notes his property backs up to a townhome development and is on a high traffic street. (Appeal).

Brustkern submitted five properties he considers comparable to his that he believes demonstrate his home is not equitably assessed. The following table is a summary of his equity comparables. (Exs. C & D).

Address	2015 Assessment	Gross Living Area (GLA)	Basement Finish
Subject	\$250,200	2193	800 LQ
1602 NW Wagner Blvd	\$216,500	2107	None
1529 NW Wagner Blvd	\$203,800	2244	None
1609 NW Wagner Blvd	\$236,600	2335	800 LQ
1513 NW Campus Dr	\$236,600	2244	None
1601 NW Wagner Blvd	\$237,500	2409	905 Avg

None of the properties recently sold and Brustkern did not submit an opinion of value for the properties. First, we note several of the properties lack basement finish which would affect their assessed values. Moreover, simply comparing assessments is insufficient evidence for an equity claim. Typically, the *Maxwell* equity analysis is done by comparing prior year sales (2014) to the current assessment (2015). Because there is no sales information for these properties, we cannot complete the *Maxwell* equity analysis.

Amy Rasmussen, Director of Litigation for the Polk County Assessor's Office, compared the subject property's cost analysis to the comparable properties that Brustkern submitted to the Board of Review. (Exs. B & D). She pointed out that there were differences in basement finish, size of the garage, porch and deck areas, as well as other differences such as the number of bathrooms that would result in differences between the cost of the properties and subsequent assessed values.

Brustkern questioned Rasmussen about the property located at 1609 NW Wagner Boulevard, which is the most similar to his property and has the same amount and quality of basement finish. Although there are some differences between the properties, we find its larger lot and deck and patio space make it slightly superior to the subject. Consistent with this conclusion, its replacement cost new (RCN) is higher than the subject's; yet, its total assessment is roughly \$14,000 *less than* the subject's. The following table summarizes the RCN of each property, the replacement cost new less depreciation (RCNLD), and the final assessed values.

Address	RCN	Physical Depreciation	Neighborhood Adjustment	Market Adjustment	RCNLD	Total Assessed Value
Subject	\$275,708	8%	17%	None	\$209,516	\$250,400
1609 NW Wagner Blvd	\$284,596	8%	17%	10%	\$194,643	\$236,600

Comparing the assessments, we understand Brustkern's concern that his property's assessment is higher than a similarly situated property.

At PAAB's request, the Board of Review filed the complete property record cards for 1609 NW Wagner Blvd and the subject. Rasmussen explained the primary underlying difference between these two properties is the 10% market adjustment applied to 1609 NW Wagner Boulevard. At the time of its sale in May 2010, 1609 NW Wagner Blvd was assessed at \$239,600. It sold for \$228,000 and then the property was assessed for \$230,900 as of January 1, 2011. Rasmussen stated the Assessor's Office applied the 10% market adjustment after its sale and that it would not be removed until the property sells again. A similar 6% adjustment was made to 1513 NW Campus Drive for the same reason.

Conversely, the subject was assessed for \$254,400 when it sold in October 2013 for \$246,000. No market adjustment was made to the subject post-sale even though it sold for less than its assessed value. As already stated, it was reassessed in 2015 for \$260,200 before the Board of Review reduced the assessment to \$250,400.

The Board of Review submitted three properties for an equity analysis. (Ex. F). However, like Brustkern's comparable properties, none have sold and therefore we cannot develop an assessment/equity ratio analysis.

iii. Analysis

The foregoing facts present a challenging question because they demonstrate that the subject property, while potentially assessed consistent with its market value, is assessed for more than a superior property located on the same street – 1609 NW Wagner Blvd. Given our findings regarding the properties, we would normally expect 1609 NW Wagner Blvd to be assessed for more than the subject and at or above the subject's 2013 sale price.

The sole cause of this discrepancy appears to be the application of a market adjustment to 1609 NW Wagner Blvd in 2010. In our view, the application of the market adjustment to 1609 NW Wagner Blvd is a non-uniform application of an assessing method to substantially similar properties. *Eagle Food Centers*, 497 N.W.2d at 864-65. In certain situations, we understand why the Assessor's Office might choose to retain a market adjustment until the property resells. In this case, however, the sale of the substantially similar subject property would have been reason enough to remove the adjustment from 1609 NW Wagner Blvd. Nonetheless, its continued application will naturally result in the perpetuation of inequity between 1609 NW Wagner Blvd and other similarly situated properties. As a result, we recommend that the Polk County Assessor consider revaluing these properties for the next assessment cycle to assure the assessments are equitable and at their market value under section 441.21, which may necessitate removing market adjustments. For the present, the only authority this Board has to resolve this inequity is to apply the same 10% market adjustment to the subject – resulting in a valuation of \$229,460 (rounded).

Order

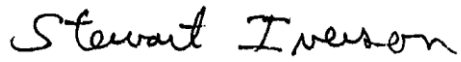
PAAB ORDERS that the Polk County Board of Review's action is modified and concludes the subject's fair and equitable assessment as of January 1, 2015, is \$229,460.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action. Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.

Dated this 9th day of September, 2016.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair

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